

# UNIT 57 DELAYS

(Formerly Unit 59)

## UNIT CERTIFICATION

### Statement of Completion

\_\_\_\_\_ has satisfactorily completed on-the-job training in the duty or duties of this Unit under the conditions described below and in accordance with the overall standard(s) for this Unit.

#### Duties

1. Determine whether the delay is excusable
2. If excusable, determine the consideration (e.g., a performance time extension).

#### Conditions

Given the contract and evidence of performance delays.

#### Overall Standard(s)

Correctly distinguish delays that are beyond the contractor's control and are without the fault or negligence of the contractor. Negotiate reasonable consideration.

### Evaluator

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# UNIT 57 DELAYS

## DOCUMENTATION OF OJT ASSIGNMENT(S)

**Description of Assignment:**

**Evaluation:**

**Completion Date:**

# UNIT 57 DELAYS

## Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
8.708(c)		Failure of an ordering office to furnish bills of lading or designate a method of transportation may result in an excusable delay when ordering for workshops for the blind and other severely handicapped.
12.403(c)(1)		Requirement that contractors notify the Government of excusable delays.
22.101-2(b)		When a work stoppage can be considered an excusable delay.
33.213		Obligation to continue performance—even when the contractor has filed a claim.
42.1304		Government delay of work
49.401(b)		No termination for default if the delay was excusable.
52.212-4(f)		Excusable delay (commercial contracts).
52.242-17		Government Delay of Work
52.249-8 and 52.249-9		Default clauses (including language on excusable delays).
52.249-14		Excusable delays (under cost reimbursement contracts).

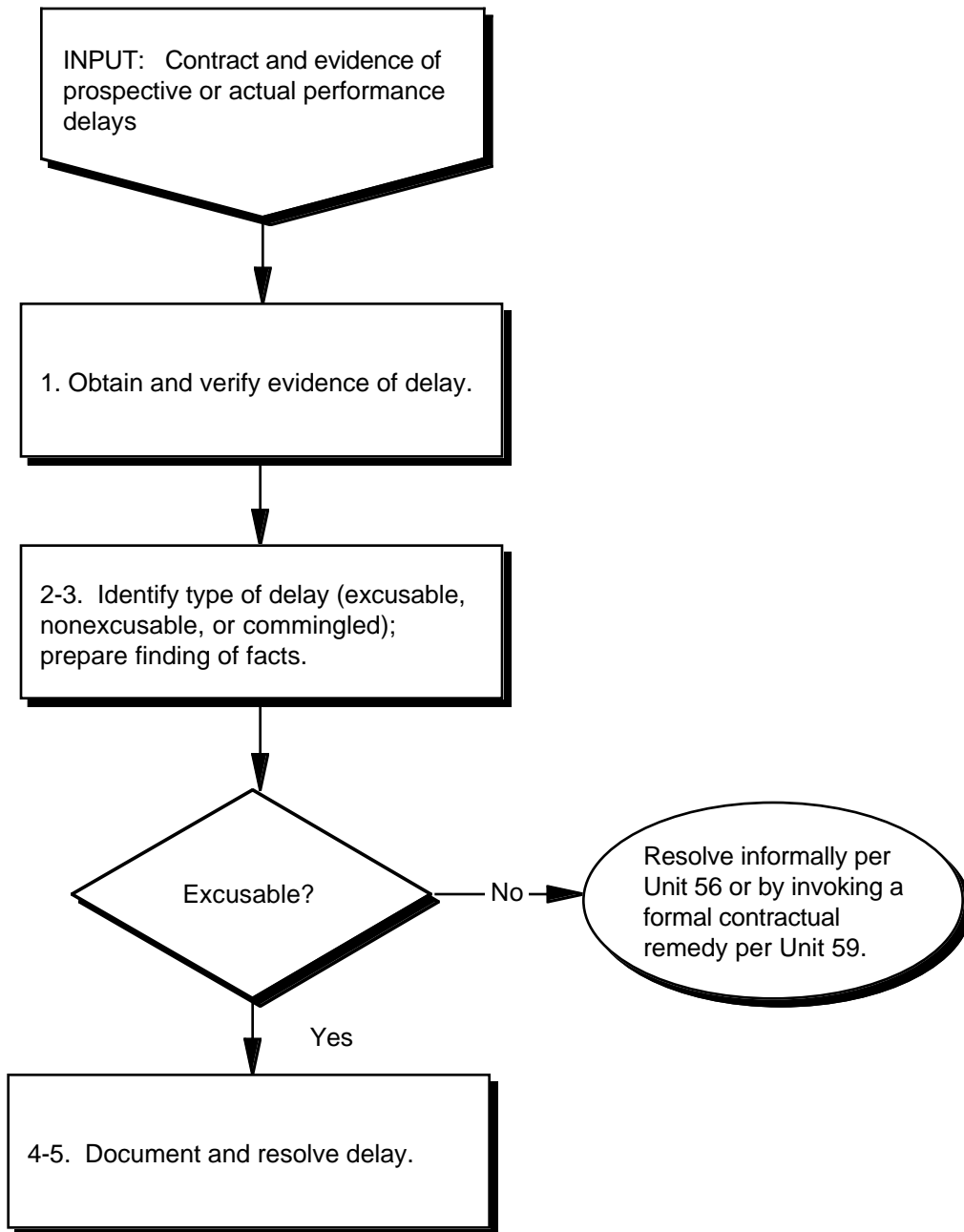
## Other KSA's

1. Knowledge of criteria and conditions for distinguishing excusable from nonexcusable delay.
2. Knowledge of typical examples of excusable delays (e.g., acts of God or the public enemy; acts of the Government in either its sovereign or contractual capacity, fire, floods, epidemics, quarantine restrictions, strikes (but see FAR 22.101-2(b)), freight embargoes, unusually severe weather, and defaults by subcontractors when supplies or services in question could not have been obtained from other sources in sufficient time to meet the required delivery schedule).
3. Knowledge of what damages are recoverable (Government negligence or fault) and not recoverable (neither party at fault).

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## Other Policies and References (Annotate As Necessary):

# DELAYS



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## Tasks

## Related Standards

<p>1. Obtain and verify evidence of performance delay.</p> <p>Based on:</p> <ul style="list-style-type: none"> <li>• Feedback from monitoring, inspection and acceptance (per Unit 56)</li> <li>• Notice from the contractor under FAR clause 52.212-4, or</li> <li>• A contractor's claim under the clause at FAR 52.242-17.</li> </ul>	<p>1. Upon notice of an unordered delay or interruption covered by the clause at 52.242-17, act to end the delay or take other appropriate action as soon as practicable. However, do not use that clause to order a suspension, delay, or interruption of the contract work or as the basis or justification for such an order. If the delay is the consequence of a change order, handle the equitable adjustment as provided in the changes clause.</p>
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⚠ Under FAR §52.212-4, contractors must notify the Government when there will be an excusable delay — “in writing as soon as it is reasonably possible”. Contractors cannot use “excusable delay” as a defense if they fail to notify the Government about the excusable delay when it occurred. The only exception is if the contractor actually was not able to notify the Government immediately (e.g., delay due to a fire or flood). [§52.212-4(f), FAC 90-32, Case 94-970]

<p>2. Identify the type of delay.</p> <ul style="list-style-type: none"> <li>• Excusable.</li> <li>• Nonexcusable (in which case, informally resolve the problem (per Unit 56) or invoke a formal remedy (per Unit 59).</li> <li>• Commingled (in which case, informally resolve the problem (per Unit 56) or invoke a formal remedy (per Unit 59) for the nonexcusable period of delay).</li> </ul>	<p>2. Correctly distinguish delays that are beyond the contractor's control and are without fault or negligence of the contractor. Identify commingled delays (i.e., delays resulting from <u>both</u> excusable and nonexcusable causes). Correctly apply the criteria in FAR 22.101-2(b) to determine whether a strike constitutes an excusable delay.</p> <p>For nonexcusable delays, the onus is on the contractor to demonstrate ability to comply with the delivery schedule or offer consideration.</p> <p>Correctly distinguish delays that are excusable under the FAR 52.212-4 but NOT under the clauses at FAR 52.249-8 through 249-10 and 249-14.</p>
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⚠ Reasons for excusable delay are broader and more lenient under FAR §52.212-4 than under the default clauses prescribed by Part 49. The test changes from “causes beyond the control and without the fault or negligence” to “beyond the **reasonable** control of the Contractor and without its fault or negligence”. In particular, FAR §52-212-4 expressly cites “delays of common carriers” as justifying a finding of excusable delay under 52.212-4, which is NOT a cited justification in Part 49 clauses. [§52.212-4(f), FAC 90-32, Case 94-970]

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## Tasks

## Related Standards

<p>3. Prepare a finding of facts on the delay..</p> <ul style="list-style-type: none"> <li>• Description of the delay.</li> <li>• A list of persons with factual knowledge of the delay.</li> <li>• Relevant statements or evidential facts.</li> <li>• A history of performance, indicating when work under the contract began.</li> <li>• Progress made to date.</li> <li>• Reasons for believing the delay is excusable and determination on any nonexcusable part of the delay.</li> <li>• Extent to which the Government might be liable for recoverable damages associated with the delay.</li> <li>• The contractor's remaining obligations.</li> <li>• The contractor's expectations regarding completion.</li> </ul>	<p>3. Accurately document factual support of a determination that the delay was excusable at least in part.</p>
<p>4. Given a finding of excusable delay, develop a position on modifying the delivery schedule or other contractual requirements.</p> <ul style="list-style-type: none"> <li>• Estimate the length of time that the excusable cause can reasonably be expected to delay performance, given the contract "as is."</li> <li>• Identify alternatives to extending the delivery period, such as: <ul style="list-style-type: none"> <li>- Employment by the contractor of additional shifts, personnel, or other resources.</li> <li>- Change in method of shipment (e.g., use of express mail).</li> <li>- Change in the requirement (e.g., deletion of a low priority task from the SOW, if such deletion would shorten the "critical path").</li> <li>- Termination for convenience.</li> </ul> </li> </ul>	<p>4. Consult the requiring activity in:</p> <ul style="list-style-type: none"> <li>• Estimating a reasonable period of additional time to perform,</li> <li>• Identifying potential alternatives, and</li> <li>• Considering the pros and cons of each such alternative (e.g., need for a bilateral modification and any likely equitable adjustment in price to implement the alternative).</li> </ul>

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## Related Standards

<p>5. Resolve excusable delays.</p> <ul style="list-style-type: none"><li>• Negotiate a bilateral agreement per Unit 76 to modify the delivery schedule or other contractual requirements.</li><li>• Respond to any claims (per Unit 81) for recoverable damages based on assertions that the excusable delay resulted from:<ul style="list-style-type: none"><li>- An act of the Contracting Officer in the administration of the contract that was not expressly or implicitly authorized by the contract, or from</li><li>- A failure of the Contracting Officer to act within the time specified in the contract, or within a reasonable time if not specified.</li><li>- Other such acts, or failure to act, by the Government.</li></ul></li></ul>	
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